HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Misc. Application No. 172 of 2006

Date of Decision : 10th March, 2006

~~A.F.R. (Approved for reporting)~~

Not approved for reporting.

Date Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 172 of 2006

Charanjeet Prasad
S/o Khushal Ram
R/o Barait, Tehsil – Berinag
District – Pithoragarh ... Applicant

Versus

1. State of Uttaranchal
2. Judicial Magistrate, Didihat, District – Pithoragarh
3. Gulab Ram
   S/o Amar Ram
   R/o Village Sanigaon
   Barait, Tehsil – Berinag
   District - Pithoragarh ... Opp. Parties

Sri S.K. Mishra, Learned counsel for the applicant
Sri G.S. Sandhu, Learned A.G.A. for the State

Hon'ble J.C.S. Rawat, J.

The present petition u/s 482 has been directed to quash the quash the chargesheet dated 31.08.2005 filed in the court of Judicial Magistrate, Didihat, Pithoragarh on 10.11.2005 in Criminal Case No. 1221 of 2005 u/s 307 and 436 I.P.C.

Brief facts for the disposal of this petition are that a FIR was lodged before the patti patwari u/s 307 and 436 I.P.C. alleging therein that a bomb was planted inside the house of the injured-complainant and the complainant sustained injuries due to explosion of the bomb. Thereafter an application u/s 156 (3) was given alleging therein the name of the accused. The patwari submitted the final report and again D.M. directed the investigation by the regular police and regular police also submitted the chargesheet.

Feeling aggrieved by the said chargesheet and cognizance order made by the Magistrate, the present petition has been filed.

Heard learned counsel for the applicant and perused the record.

It was contended on behalf of the applicant that no case is made out against the applicant and there is no legal evidence in support of the offence. Learned A.G.A. refuted the contention. Perusal of the record reveals that there is a statement recorded u/s 161 Cr.P.C. of Neeraj Kumar who has seen the incident and submitted that the applicant said to throw the bomb inside the house of the victim and immediately thereafter they left the place. The injured Govindi Devi also stated that when she was returning to his home she was informed by the son of Anand Ram that Ranjit Ram, Kailash Kumar, Charanjeet and Khusal had thrown the bomb in the house of the complainant and he had seen them throwing bomb. There is sufficient evidence against the applicant-accused to proceed with. So the prima-facie case is made out against the applicant at this stage.

The next contention raised by the learned counsel for the applicant is that on the date of incident the applicant was not present on the spot and he was on his duty at the place of his employer. This plea of alibi can be taken during the trial and it can not be decided u/s 482 Cr.P.C.

The power of this Court under section 482 Cr.P.C. is very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to quash the same in exercise of the inherent powers under section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case by the Magistrate to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the

complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this Court. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

It has been held in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that it is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire whether the allegations in the complaint are likely to be established or not.

It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

In view of the forgoing discussion, I am of the view that this petition devoids of merit is liable to be dismissed and is dismissed accordingly.

(J.C.S. RAWAT, J.)

10th March, 2006
Shiv